

Tenancy Deposit Protection Adjudication Case Study Bulletin Twelve: 24th October 2008

Case Study One:

The Landlord was seeking to retain the total deposit of £1,000.00 for numerous items that arose as a result of the exit report. The Tenant took issue with many of the items.

The Adjudicator awarded return of the deposit to the Tenant noting that a) some of the items being complained about by the Landlord were not on the inventory, b) responsibility for the garden was not covered either by the inventory of Tenancy Agreement, c) the Tenant had good arguments against some of the items, and d) some (maintenance issue) items had been complained about during the Tenancy.

Case Study Two:

The Tenant was seeking a refund of £700.00 being retained by the Landlord's Agent out of a total deposit of £937.50. The sum was being retained to rectify the alleged poor state of the Property left by the Tenant for items including a) painting, b) cleaning, and c) damage.

The Adjudicator directed that the £600.00 be refunded to the Tenant and £100.00 to the Landlord's Agent. The Adjudicator noted that a) no evidence of any cost had been provided for the items being claimed, b) apart from four items shown in photos (which the Adjudicator assessed at £100) they did not convey the seriousness of the alleged damage, c) mould on the bathroom ceiling was probably due to poor ventilation and the damp patches on the walls noted at check-in, and d) the alleged smell and stains caused by the Tenant's smoking were to be considered as fair wear and tear as there were no restrictions in the Tenancy Agreement and no comment was made by the Landlord during the Tenancy.

Case Study Three:

The Landlord sought to deduct the sum of £536.25 from the Tenant's deposit in respect of dilapidations at the end of the tenancy. The Tenant sought the return of the deposit, stating that he had complied with the terms of the tenancy.

The Adjudicator found that the Landlord's claim succeeded in part. The Landlord was entitled to £3211.25 and the Tenant £225.00.

The factors that weighed against the Landlord was the fact that there was no agreed check out inventory, nor any dated photographic evidence. In addition, in relation to some of the items, the Landlord had failed to produce invoices/receipts confirming the costs. In the circumstances the Adjudicator found that the Landlord was only entitled to deductions in relation to those items in which there were implied and/or express admissions from the Tenant, and which were supported by some other evidence. The balance failed. It should also be noted that a factor that also weighed heavily against the Landlord, was the fact that the Landlord's Agent had attended a check out and missed a number of items, that the Landlord subsequently discovered herself.

Case Study Four:

The Landlord sought to deduct the sum of £190.00 from the deposit, in order to contribute towards losses arising as a result of the Tenant's breach of the Agreement. The Tenant had also left the property before the expiry of the fixed term, in breach of the terms of the Agreement.

The Tenant claimed only to owe the sum of £27.29, on the basis that he had overpaid his rent to the Landlord. The Tenant also alleged that he had been unlawfully evicted from the property.

The Adjudicator found that the Landlord was entitled to the entire amount in dispute. The Landlord had fully explained his case, and had produced relevant documents and evidence. The Tenant's submissions were incredible and unsustainable. The Tenant had signed an agreement indicating to pay the amount, after he had left the property. At no stage had the Tenant denied signing the document, which the Adjudicator found to be binding on the parties. If, as the Tenant submitted he

had been unlawfully evicted, it was incredible that some three days later he freely attended the Landlord's property with his father and signed an agreement to pay for the dilapidations. In the circumstances the Landlord's succeeded in full.

There was no indication in the Landlord's submission that there had been any damage, or there were any outstanding costs to be paid for the supply of services to the property, both of which were the sole reasons for withholding any deposit. This being the case, the Adjudicator directed that the DPS refund the £650.00 deposit to the Tenant.

Case Study Five:

The Landlord sought to deduct the sum of £190.00 representing the cost of cleaning charges. The Tenant sought the return of the deposit, stating that he had complied with the terms of the Tenancy, and in fact the property was in a better condition when he vacated.

The Adjudicator found that the Landlord's claim failed. The Tenant was entitled to the entire amount in dispute.

The check in report supported the Tenant's contention that the property was not in a good state when he moved in. The check out report, which was not agreed by the Tenant who contended that the property was in a far worse state also assisted the Tenant. Additional photographic evidence produced by the Tenant was also of assistance. Taking into account all matters the Adjudicator found, on balance, that the Tenant was entitled to the entire amount in dispute, and accordingly directed the same.

Case Study Six:

The Tenant was seeking a refund of £700.00 being retained by the Landlord's Agent (who argued that it was only £600.00 for items including a) painting, b) cleaning, and c) rent shortfall.

The Adjudicator directed that the £700.00 (the sum which he found to be correct) be refunded to the Tenant. The Adjudicator noted that the Tenant, although in breach of her obligations to pay her rent in full when due, was entitled to compensation in the sum of £400.00 as retained for Landlord's the breach of the obligation to provide central heating for a month during a winter

period. The remainder of the claim failed because there was no check-in or check-out inventory to compare items against.

Case Study Seven:

The Landlord sought to retain part of the deposit in respect of various dilapidations. The Tenant sought the return of the deposit, but did admit liability for some items.

The Adjudicator found that the Landlords' claim succeeded in part. The main item (damage to tiles) failed due to the fact that it was added on after the check-out inventory had been completed, and it was not clear whether the defect complained of was pre-existing, bearing in mind that the original contractors had to return to remedy some defective work.

The claim for damage to the bath succeeded, in light of the Tenants admission regarding liability only. The damage was assessed at 50% of the amount claimed. The balance of the claim failed.

Case Study Eight:

The Landlord sought the sum of £700.00 to compensate for damage to a sofa at the end of the tenancy. The Tenants admitted liability for the sofa, but did not accept the amount claimed. They also referred to problems with the plumbing, heating, and with the aerial.

The Adjudicator found that he did not have enough information to make a decision regarding the issues raised by the Tenant in relation to the breach of express and/or implied covenant.

In relation to the sofa, the Adjudicator had to assess quantum, which was eventually assessed at £350.00. The decision was reached taking into account that there was no evidence of (1) the make/model of the item; (2) the purchase price, other than the Landlords own words; (3) the condition of the item on the inventory. Further, no photographic evidence either before and/or after the event was produced. The Adjudicator considered the quote obtained and the fact that allowances had to be made for fair 'wear and tear'.

Case Study Nine:

The Landlord was seeking to retain the sum of £594.65 out of a total deposit of £900.00 for various listed items, these being a) Basic clean £100.00, b) Stains on walls £100.00, c) Carpet cleaner £147.00, d) Kitchen door unit £41.94, e) Freezer contribution £65.00, f) New settee £230.00, g) Blind repair and cleaning £44.69 and h) Bulbs £5.55.

The Tenant agreed that items c), e), g) and h) totalling £262.24 should be agreed. However, the Tenant was of the view that the cleaning costs are unreasonable and the sofa was delivered damaged.

The Adjudicator decided that the flat needed cleaning as claimed but disallowed a claim for a damaged kitchen unit door which had not been recorded on the Inventory, unlike a broken freezer door. The claim for the sofa was allowed at a cost to clean. The Adjudicator decided that the total to be retained by the Landlord was £487.24 and the balance of £107.41 was to be returned to the Tenant.

Case Study Ten:

The Tenant was seeking a refund of the total deposit of £425.00 being retained by the Landlord's Agent. The Landlord's Agent explained that they had noted a) there were pencil marks on the stairs, b) there were marks on the décor in the lounge and c) the cooker was left in an unclean condition.

The Landlord's Agent went onto comment that the Landlord the carried out a further inspection and was unhappy with the condition of the house. Directing that the Tenant be refunded in full, the Adjudicator commented that there was absolutely no evidence of anything relating to the condition of the property.

Case Study Eleven:

The Tenant was seeking a refund of the total deposit of £823.33 being retained by the Landlord. From the Tenant's submissions (nothing was received from the Landlord), it was evident that the Landlord was seeking to retain the sum of £205.00 from the deposit. However, his cheque paying the balance of £618.33 did not clear into the Tenant's account.

The Adjudicator progressed with the adjudication without submissions from the Landlord. He had to assume that TDSL has received the disputed sum and allowed the adjudication to progress in accordance with clause E4.3 of their Rules.

The Adjudicator decided that without any submissions from the Landlord, there was no evidence to justify a) retaining the sum of £40.00 for cleaning, and b) retaining the sum of £165.00 being purported charges for gas and electricity even though he found that the Tenant was liable for those charges by way of clause 4 (6) of the Agreement.

The Tenant had also claimed interest and costs which the Adjudicator disallowed noting that in accordance with the TDSL Rules, a) each party must bear their own costs, and b) the dispute cannot involve a claim for more than the value of the deposit. These two heads of claim therefore failed. The Adjudicator directed that TDSL refund to the Tenant the total deposit of £823.33

Case Study Twelve:

The Landlord's Agent was seeking to retain the total deposit of £595.00 for a) one weeks rent, b) cleaning and c) various items of damage, and d) time and expenses resolving the issues.

The Tenant agreed that £100.00 should be allowed for items she accepted.

The Adjudicator held that the claim for a weeks lost rental failed because a) there was no evidence of a new Tenant and b) the items for which the Adjudicator held the current Tenant liable could have been rectified quite quickly.

The Adjudicator was critical of one head of claim for alleged time and expenses which included an unspecified sum for gas to heat the water for cleaning. The remainder of the items either succeeded or failed based on the inventory and / or photos.

The Adjudicator directed that the Deposit Protection Service refund £169.48 to the Landlord's Agent and £426.52 to the Tenant.

Case Study Thirteen:

The Tenant was seeking return of the whole deposit of £962.30. The Landlord agreed that the Tenant should be paid £452.60. However, he wanted to retain the balance of £509.70 comprising Tenancy surrender costs of £273.66, dilapidations of £281.40 and 'Returns' of (£45.66).

The Adjudicator held that the principle of extra costs being incurred when a Tenant terminated a Tenancy early was acceptable. However, not all the costs being charged were reasonable and the Adjudicator awarded the Landlord £150.00 under this heading.

The Adjudicator awarded the Landlord £165.00 under the dilapidations heading noting that agreement had been reached on the day of check out as to the majority of the charges. Charges levied by the Landlord after check out were rejected. The Adjudicator directed that the Deposit Protection Service refund £269.34 to the Landlord and £692.96 to the Tenant.

Case Study Fourteen:

The Tenant was seeking a refund of the disputed sum of £1,110.00 being retained by the Landlord out of a total deposit of £2,010.00. The sum is being retained for a) damage to carpet, b) redecoration of wall paper, and c) replacement floor tiles to bathroom.

The Landlord's Agent had provided quotes, some photos, a check out inventory and a previous check out inventory from the previous tenancy as the check in signed by the Tenant in this case was not available.

Directing that the Tenant be refunded in full, the Adjudicator commented that there was absolutely no evidence of anything relating to the condition of the property when the Tenant moved in. The check out report from the previous Tenant had absolutely no bearing on the Tenant in this case.

Looking at the photos, the Adjudicator observed that one photograph showed a carpet damaged with an iron burn. This reflected the exact description of the damage previously recorded on the

check out for the previous Tenant in Bedroom 2 where it was stated "... 1 x iron mark present...". This strengthened the Tenant's argument.

Case Study Fifteen:

The Landlord's Agent was seeking to retain the total deposit of £495.00 because the Tenant vacated 4 months early. The Tenant argued that there were problems with the Property which is why she moved out.

The Adjudicator found that the Tenant was in breach of her obligations under the Agreement by vacating the Property some 4 months early. The Adjudicator directed that the Deposit Protection Service refund the £495.00 deposit to the Landlord's Agent.

Case Study Sixteen:

The Landlord produced a check out report that the Adjudicator found very helpful. It tabulated the condition of the property at the start of the tenancy and on check out in a way that made a comparison of the condition of the property at those two points in the tenancy a straightforward task. The terms of the tenancy required the Tenants to leave the property in good decorative order, and the check out report, taken as a whole, confirmed that they had. As a result the Landlord's claim to a payment towards redecorating failed.

Case Study Seventeen:

The Landlord sought a payment from the deposit because the Tenants returned the property at the end of the tenancy with cracked floor tiles, peeling paint in the bathroom, and a discoloured shower base. His claim failed because he was unable to identify a breach of the tenancy agreement or show the Tenants had caused any damage to the property. All the matters raised by the Landlord were maintenance matters that were his responsibility.

Case Study Eighteen:

The Landlords recovered the cost of replacing soiled and stained carpets, together with part of an allowance they gave their new Tenant to clean the property. The Landlords also recovered the cost of renovating the gardens, which became overgrown as a result of the Tenants inability to care for them due to ill health.

Case Study Nineteen:

The Tenant was seeking a refund of the total deposit of £3,040 being retained by the Landlord's Agent.

The Landlord's Agent's submissions comprised a) a series of emails to the Landlord requesting reasons why he wants to retain the deposit, b) a copy of the Agreement and c) calculations relating to outstanding fees due to early termination of the tenancy.

Despite the Landlord's Agent's requests to the Landlord, the Landlord had not provided any substantiation for withholding any of the deposit. As a result, the Adjudicator directed that TDSL refund to the Landlord's Agent the sum of £310.42 (fees lost as a result of early termination of the tenancy) and to the Tenant the balance of £2,729.58.

Case Study Twenty:

The Tenant was seeking a refund of his deposit of £460.00 plus interest.

The Landlord argued that the Tenant breached the Tenancy Agreement in several regards including a) he left the Property early, b) he has refused to pay any outstanding rent, c) he has rent arrears of 40 days, d) he has unpaid council tax, e) broken key.

The Adjudicator found the Tenant's argument that the failures and breaches on the part of the Landlord related to a) electrical installation safety, and b) conduct of another Tenant the subject of a separate Tenancy Agreement, amounted to a repudiatory breach of the Agreement. After careful analysis, he directed that DPS refund £44.52 to the Landlord and the balance of the deposit of £415.48 be returned to the Tenant.

Case Study Twenty-one:

The Landlord was seeking to retain the total deposit of £700.00 because the Tenant vacated 4 months into a 6 month tenancy without giving notice or a forwarding address. The Landlord submitted that the Tenant owed one month's rent.

The Tenant argued that the Landlord only paid the deposit to the DPS on 24 June 2008 and believed the Landlord had no intention of paying the deposit back to him.

The Adjudicator found that the Landlord was in breach of his statutory obligations by not protecting the deposit as quickly as he should have done. However, there was no sanction for this lapse.

The Adjudicator found that the Tenant had only paid for three of the four months he had stayed at the Property and directed that DPS refund the total deposit of £700.00 to the Landlord.

Case Study Twenty-two:

The Landlord sought to deduct the total sum of £251.75 consisting of carpet cleaning - £186.75, garden tidy - £40.00, and Northwood Administration Fee - £25.00. The Tenants sought the return of the deposit.

The Adjudicator found that the Landlord's claim succeeded in part. The Adjudicator found that the Landlord was only entitled to the sum of £40.00 representing the fee for the gardening. The Tenants had indicated that the garden had not been cut and dealt with, but they had offered to return to the property to do so, after the tenancy had ended. The Adjudicator found that the Landlord's claim for this item was not unreasonable in all of the circumstances.

The other two items failed. Firstly in relation to the carpet cleaning, the Tenants had produced evidence that they had arranged for the carpets to be cleaned. However, the most compelling evidence was the Landlord's own check out report, which did not indicate any such problems. In relation to the Administration Fee, the Adjudicator could find no legal/contractual basis for the deduction of the Administration Fee, let alone any information how the same had been quantified.

Case Study Twenty-three:

The Landlord in this case sought to retain the sum of £250.82, consisting of (i) £70.00 for a damaged kitchen work top and (ii) £180.82 outstanding rent, for the failure to deliver the keys at the end of the tenancy.

The Adjudicator found the deduction for the damage to the worktop failed. The check out inventory was not agreed, and the check-in report also showed that there were a number of problems with the condition at the start of the property. Further, the quote for the work produced post dated the original claim for this item and referred to a different address.

The claim for the rent succeeded in full. The Adjudicator did not accept the Tenants submissions that they did not know what to do, in order to deliver up the keys and possession of the property. The Agent had written to the Tenant regarding the same, and had also provided specific instructions. However, most compelling was the fact that the Tenancy Agreement itself contained a specific clause requiring the Tenants to deliver the keys to the Agents offices.

Case Study Twenty-four:

The Landlords were awarded a payment from the deposit to cover damage to the property over and above normal wear and tear, and were able to rely on an inventory signed by the Tenants to support their claim, when the Tenants suggested that the damage was present when the tenancy began. The Tenants were able to set off an overpayment of rent.

Case Study Twenty-five:

The Tenant was seeking a refund of his deposit of £460.00 plus interest. The Landlord was seeking to retain the sum of £1,320.60 out of a total deposit of £1,980.00 for various matters including a) repainting, b) misshapen sofa, c) chips to and broken furniture, d) a cracked window, e) cleaning, and f) an electrician to fix a socket and replace bulbs etc. The Tenant believed that the Landlord should not receive the entire sum in dispute.

Having analysed the arguments for each item, the Adjudicator directed that the Landlord should be refunded the sum of £677.25 and the balance of the deposit of £643.35 be returned to the Tenant.

Case Study Twenty-six:

Due to the nature of the submissions, the amount in dispute was not clear. It was also not clear what amount had been reimbursed by the DPS to the Tenant. For the sake of clarity therefore, the Adjudicator made a decision on the total deposit.

The Tenant was seeking a refund of the outstanding balance of £1,250.00 out of a total deposit of £2,250.00. The Landlord's Agent appeared to be retaining the sum of £1,250.00 for outstanding rent. It was not clear what had happened to the remaining £1,000.00.

The dispute purely related to an argument over the credit to be applied to the rent for the lack of an en-suite shower for 50 of the 77 weeks the Tenant was in the Property.

Having reviewed the submissions and photographs and borne in mind the reduction for the lack of a double garage, the Adjudicator found that the Tenant's valuation (£1,250.00) was more realistic than the Landlord's. The Landlord's Agent had not provided any arguments as to why the reduction of £350.00 suggested by the Landlord should be preferred over the £1,250.00 reduction suggested (with arguments and a comparison) by the Claimant. The Adjudicator directed that the full deposit (less any payments already made if any) be returned to the Tenant.

Case Study Twenty-seven:

The Landlord sought various deductions for dilapidations at the end of the Tenancy. The Tenant sought the return of the deposit.

The Adjudicator found that the Landlord was entitled to the entire amount of the deposit in dispute.

The Landlord's original claim far exceeded the entire amount of the deposit in dispute. Those items that the Adjudicator found decided that the Landlord was entitled to recover, were sufficient

to cover the entire amount of the deposit. In the circumstances, the Adjudicator directed that the entire deposit be returned to the Landlord.

Case Study Twenty-eight:

The Landlords sought to retain the entire deposit of £550.00 to contribute towards losses consisting of : one month's outstanding rent - £550.00, a broken bathroom mirror, broken garden ornaments and Landlords' fees - £250.00.

The Tenants sought the return of the deposit. They complained of various problems, including problems relating to disrepair.

The Adjudicator found that the Landlords' claim succeeded in full. The Adjudicator found in favour of the Landlords in respect of the outstanding rent and the Landlords' charges, which was agreed as a condition of the Tenants' early release from the Tenancy Agreement.

The Landlords' claim in respect of the other items failed in any event. The lack of a check in and check out report; invoices, quotations, receipts, make and model of the alleged items damaged; and/or description of the manner in which the items were damaged, as well as the absence of photographs were fatal to that claim. The Adjudicator found that he did not have enough information to substantiate the claim in respect of the disrepair.

Case Study Twenty-nine:

As there was no evidence that the Landlord had released the Tenant from the tenancy agreement or re-let the property he was entitled to the deposit to cover rent which fell due during the fixed term of the tenancy.

Case Study Thirty

The Landlord sought to deduct the sum of £700.00 from the deposit of £1300.00, to contribute towards various losses consisting of :

Five deep scratches and various damage to floor - £400.00
Cost of repairing a wardrobe - £100.00
Cost of repairing combination locks (x 3) and call out charge - £22.00
Cleaning - 16 hours @ £8.00 per hour - £128.00
Inventory - £10.00
Bathroom light pull missing - £10.00
TV control broken - £30.00

The Tenant submitted that she was entitled to have the deposit returned to her.

The Adjudicator found that the Landlord was entitled to the sum of £32.00, and the Tenant was entitled to the balance. The Adjudicator reached this conclusion, taking into account the Tenant's succinct and clear submissions, and the absence of adequate submissions and supporting evidence on the part of the Landlord. In particular, the Landlord failed to produce any, or any adequate evidence relating to the deductions. There were no invoices, receipts or quotations for the cost of the original items and/or the replacement items. Further there was no agreed check out inventory, nor was there any photographic evidence produced by the Landlord, identifying the alleged damage.

The Tenant had produced clear and cogent evidence in respect of the proposed deduction, and in the circumstances the Adjudicator found that the Landlord was only entitled to recover four hours cleaning at the rate of £8.00 per hour, in view of the fact that the Tenant accepted that the property may have required a clean, but not a deep clean.

Case Study Thirty-one:

Without an inventory to establish the condition of the property at the start of the tenancy the Landlord was unable to prove his case to the required standard when the evidence submitted by the Tenants contradicted his evidence. As a result he could only recover a payment from the deposit where his claim was admitted by the Tenants or did not depend on the condition of the property when the tenancy began.

Case Study Thirty-two:

The Landlord's Agent was seeking to retain £850.00 out of the total deposit of £910.00 for rent arrears. The Tenant argued that the rent has been paid for the entire length of the Agreement. However, he had not paid £850.00 due to damage to a TV set and production of a report, the cause of the damage being damp for which the Landlord was responsible.

The Adjudicator found that the Landlord was in breach of his repairing obligations under the Agreement. The cause of the damage to the TV set was damp for which the Landlord was responsible for. Despite the Agreement containing a Clause making the Tenant liable for personal possessions insurance, the Adjudicator held the Landlord's Agent liable because they gave the impression that they would be filing an insurance claim to recover the cost. Furthermore, they did not provide any response to the Tenant's comments.

Case Study Thirty-three:

The Landlord was entitled to a payment from the deposit to compensate for the late handover of the property, but could not establish that the property needed cleaning after the Tenants moved out. Without evidence such as a check out report or photographs to corroborate her agent's evidence the Landlord could not prove her case to the required standard when the Tenants' evidence contradicted hers.

Case Study Thirty-four:

The Landlord's claim was evidenced by independent check in and check out reports, and where they supported him he was able to recover compensation from the deposit. Where the cause of damage was unknown, but could be ordinary wear and tear, the Landlord did not succeed because he had not obtained a report to establish the cause was a breach of the tenancy agreement by the Tenant.

Case Study Thirty-five:

The Landlord sought various deductions for dilapidations at the end of the Tenancy. The Tenant sought the return of the deposit. The Adjudicator found that the Landlord was entitled to the entire amount of the deposit in dispute.

The Landlord's original claim far exceeded the entire amount of the deposit in dispute. Those items that the Adjudicator found decided that the Landlord was entitled to recover, were sufficient to cover the entire amount of the deposit. In the circumstances, the Adjudicator directed that the entire deposit be returned to the Landlord.

Case Study Thirty-six:

The Landlord was seeking to retain the total deposit of £300.00 for a) changing of the front door lock, b) renewal of carpet and c) replacement of desk and chair.

Finding for the Landlord, the Adjudicator decided that the Tenant had been requested to return the keys in writing by 12 noon on 30th June 2008. She failed to do this and the Landlord had to change the lock for a new Tenant moving in on 1st July 2008.

The carpet (new at commencement of Tenancy) and desk & chair were noted as being damaged during an inspection two weeks before the end of the Tenancy. Nothing was done by the Tenant to rectify the damage so the Landlord's claims for these items (desk and chair adjusted for fair wear and tear by the Landlord) succeeded as well.

Case Study Thirty-seven:

When the Tenants failed to arrange for the property to be professionally cleaned at the end of the tenancy, in breach of the tenancy agreement, the Landlord was entitled to recover the cost of cleaning, including an allowance for her own time. The Tenants also had to reimburse the cost of replacing the light bulbs removed by them.

Case Study Thirty-eight:

The Landlords were entitled to replace a carpet that had been scorched by an iron, and recovered the cost of a replacement less an allowance for betterment. The cost of repairs to a window were not recovered as the Landlords failed to establish a connection between the Tenants alleged failure to deal with condensation and the rot to be repaired.

Case Study Thirty-nine:

The Landlord's claim was partly admitted by the Tenants. Where was disputed the Landlord did not put forward sufficient evidence to prove her case, and therefore the Adjudicator did not allow the disputed items.

Case Study Forty:

The Landlord did not submit any evidence in support of his claim, and as a result the Adjudicator was unable to direct that he should receive a payment from the deposit.

Case Study Forty-one:

The Landlord was seeking to retain the total deposit of £500 for an outstanding month's rent.

The Adjudicator found that the Tenant had moved out in July 2008. Although he was due to pay rent to cover the month of August, he alleged that the Landlord had managed to obtain a new Tenant who had paid rent for August. The Landlord did not respond to this comment and the Adjudicator therefore directed that the deposit be returned to the Tenant as the Landlord had not therefore lost any rent at all.

Case Study Forty -two:

The Landlords were seeking to retain the total deposit of £670.00 to cover a) the legal costs of £870.00 involved in evicting the Tenant as she had failed to meet her obligations to pay rent for 6 months, and b) late payment interest of £94.65.

Having read the submissions and decided that a substantial injustice would be the result had he not done so, the Adjudicator requested that the Landlords provide certain information to substantiate the costs they were seeking. He did this in accordance with Clause 27.c.i of the DPS Rules. Unfortunately the information requested was not provided.

By way of a clause in the Tenancy Agreement, the Adjudicator decided that the Landlords would have been entitled to retain the sum of £94.65 interest due on late rent payments. However, without the build up requested the head of claim failed.

Furthermore and after careful analysis of the facts; the Agreement between the parties; and the DPS Rules, the Adjudicator decided that he did not have the jurisdiction to award legal costs because they were incurred as a result of preparing for eviction. The total deposit was therefore returned to the Tenant.

Case Study Forty -three:

The Landlord was seeking to retain the full deposit of £825.00 for a) outstanding rent of £700.00 and b) damage to a carpet in the sum of £125.00.

The Adjudicator decided that the Landlord was entitled to retain the sum of £700.00 because the written notice had not been given in time in accordance with the Tenancy Agreement, despite the Tenant keeping the Landlord informed verbally. The Landlord had not provided any evidence to substantiate the damaged carpet and the Adjudicator directed that the sum of £125.00 be returned to the Tenant.

Case Study Forty -four:

Without evidence of the condition of the property at the start of the tenancy the Landlords were unable to establish a claim for the costs of cleaning at the end of the tenancy agreement when the Tenants obligation was to return the property in at least as clean condition as it was at the start. The Landlords inventory and check out report did establish that damage had been caused, and the Landlords recovered a payment from the deposit to cover the cost of repairs and replacement, after allowing for betterment.

Case Study Forty -five:

Although the Tenants' failure to pay their utility bills was a breach of the tenancy agreement the Landlord suffered no loss as a result, as she was not liable to pay the bills if the Tenants did not. The claim for redecorating also failed. The Tenants required the Landlords consent before decorating, but that consent could not be unreasonably withheld. As there was no evidence that the Landlord would have been entitled to withhold her consent to the Tenants decorating the property, and the final inventory said the property was in good decorative order, she could not recover her estimate of the cost of redecorating.

Case Study Forty -six

The Landlords failed to failed to recover a re-letting fee when they accepted the Tenants notice to end the tenancy early and then re-let the property. There was no evidence to corroborate an agreement to pay the re-letting fee, and as the Landlords would have incurred the fee anyway at the end of the tenancy it was not recoverable as damages.

Case Study Forty -seven:

The Landlord recovered an agreed amount for a damaged carpet, but not the increased amount claimed. There was no evidence to justify the increase. Other smaller items claimed for were not mentioned in the check in report and therefore there was no evidence to support this part of the claim.

Case Study Forty -eight:

The Landlord was seeking to retain £346.63 out of a deposit of £900.00 for a) damage to walls during the tenancy and b) cleaning.

Directing that the full sum be returned to the Tenant, the Adjudicator found that a) the Landlord had not demonstrated any of the costs being claimed had actually been incurred and b) the inspection reports at the commencement of the tenancy reflected the state of the Property at the end as argued by the Tenant.

Case Study Forty -nine:

The Landlord was seeking to retain £481.80 out of a deposit of £1,200.00 for a) a new tumble dryer, b) removal of personal belongings, c) cleaning throughout, and d) property visits due to noise pollution complaints.

Directing that the full sum be returned to the Tenant, the Adjudicator found that a) the Landlord's Agent had not demonstrated that the problem with the tumble dryer could be blamed on the Tenant, b) there were personal belongings left by the previous Tenant which had not been removed c) the Property was cleaner at the end of the tenancy, and d) there was no basis under the Tenancy Agreement to charge for visits.

Case Study Fifty:

The Landlord was seeking to retain the total deposit of £565 for an outstanding month's rent.

The Adjudicator found that the Landlord was entitled to retain the deposit because the appropriate notice had not been given in writing.

Case Study Fifty –one:

The Landlord was seeking to retain the £600.00 for a) renewal of Tenancy Agreement charge of £50.00, b) outstanding utility bills, c) assisting with the Tenant's move costing £300.00, d) Attending the property following a disturbance, charge of £100.00.

The Adjudicator found that the Landlord was entitled to retain the sum of £339.18 for outstanding utility bills. The balance was returned to the Tenant because the Landlord had not demonstrated that he was entitled to retain the sums being claimed under the Tenancy Agreement. Furthermore, and despite a request during the adjudication, the Landlord failed to provide a copy of the Agreement to the Adjudicator.

Case Study Fifty -two:

The term of the tenancy agreement which the Landlord relied on to require the Tenant to give two months notice of his intention not to renew the tenancy agreement at the end of the fixed term of one year was void under the Unfair Terms in Consumer Contracts Regulations 1999. Where the Landlord's claim for cleaning was supported by the independent evidence of the check out report it succeeded.

Case Study Fifty -three:

The Landlord was not entitled to increase the rent for the property when the Tenant's girlfriend moved in with him, but was entitled to the cost of repairing a damaged worktop.

Case Study Fifty -four:

Without any evidence to establish the condition of the property at the start of the tenancy the Landlord was unable to establish his claim. Where the Tenants dispute the Landlord's claim, and put forward evidence to dispute it, the Landlord needs corroborative evidence to prove his case to the required standard. In this case there was no corroborative evidence and the Landlord's claim failed as a result.

Case Study Fifty -three:

The Landlord was seeking to retain the £1,360.40 for a) inventory check-out report (£141.00), b) blocked toilet (£94.00), c) toilet seat replacement (£38.00), d) blood stained mattress replacement

(£99.00), e) mattress cover replacement (£52.50), f) descaling toilet solution (£38.93), g) professional cleaning (£225.00), h) carpet cleaning (£185.00), i) painting water stained walls (£400.00), and j) paint materials (£86.97).

Directing that TDSL refund to the sum of £996.40 to the Landlord and the sum of £ 364.00 to the Tenant, the Adjudicator found that the Tenant was entitled to a refund for a) the inventory check out charges because the Landlord had not followed the procedure set out in the tenancy Agreement, b) toilet seat replacement as it was not mentioned on the Check-in inventory and c) carpet cleaning.

Case Study Fifty -four:

The tenancy agreement required the Tenants to keep the fixtures and fittings in good and Tenantable repair, without any allowance for fair wear and tear. If the Tenants' liability had not been limited to £25 per item the clause would have been unfair, and therefore void under the Unfair Terms in Consumer Contracts Regulations 1999. The Landlord was able to recover £25 towards the cost of repairing a blind.

Case Study Fifty -five:

The Landlord was seeking to retain the full deposit of £238.33 plus another £64.07 (£302.40 in total) for a) replacing a chair £45.00, b) cleaning and repainting a wall £30.00, c) Refitting a curtain track £20.00, d) washing ironing and re-hanging curtains £30.00, e) replacement bed £80.00 and f) damage to communal areas £117.90.

The Tenant had agreed that the Landlord should receive £100.00

The Adjudicator reminded the Landlord that the scope of the adjudication scheme was for the deposit paid by the Tenant only. Any sums over and above that could not be considered.

Directing that £138.33 be refunded to the Tenant, the Adjudicator pointed out that there was no evidence to support the sums being claimed. There were no invoices, inventories or Check-in photos.

Case Study Fifty -six:

The Landlord was seeking to retain the full deposit of £550.00 for a) one months rent, b) attendance by the Agent to remove outside bins which had been locked in the flat on departure, and c) cleaning the flat which was filthy.

The Adjudicator directed that DPS return the sum of £450 to the Landlord as he found the Tenant in breach of his obligation to pay his rent monthly.

Without any invoices, Check-out inventory, photos, etc, the other two heads of claim failed because there was no evidence to prove the case. It was the word of the Landlord against that of the Tenant. The Adjudicator therefore directed that the sum of £100.00 be returned to the Tenant.

Case Study Fifty -seven:

The Landlords did not support their claim with the evidence that was required to prove it on the balance of probabilities and therefore they only recovered the amount admitted by the Tenants.

Case Study Fifty -eight:

The Landlords were seeking to retain the full deposit of £400.50 for various items. The Landlords argued that the full estimate for remedial work costs was £5,916.00 and they considered that the Tenant had violated several sections of the Agreement.

The Tenant had been living at the Property for over 15 years and the Tenancy had been renewed on 01 April 2008. The Tenant moved out a few months later. The Adjudicator was therefore only in a position to make a decision on the period from 01 April 2008.

Directing that the full deposit be returned to the Tenant, the Adjudicator noted that there was no signed Check-in inventory and there was no signed Check-out inventory to compare against. Furthermore, there were no Check-in photos to compare with the Check-out photographs

Case Study Fifty -nine:

The Landlord was able to recover the cost of cleaning, repairs and replacement where she had evidence to corroborate her claim, but not otherwise. Where the Landlord undertook cleaning work herself she was allowed the same hourly rate as the cleaner she employed charged.

Case Study Sixty

Another case where the Landlords were unable to prove their case to the required standard, when the Tenants produced a point by point rebuttal, due to the lack of an inventory or photographs, or some other corroborative evidence, to establish the condition of the property at the start of the tenancy.

Case Study Sixty -one:

The Landlords were seeking to retain the full deposit of £400.50 for various items. The Landlords argued that the full estimate for remedial work costs was £5,916.00 and they considered that the Tenant had violated several sections of the Agreement.

The Tenant had been living at the Property for over 15 years and the Tenancy had been renewed on 01 April 2008. The Tenant moved out a few months later. The Adjudicator was therefore only in a position to make a decision on the period from 01 April 2008.

Directing that the full deposit be returned to the Tenant, the Adjudicator noted that there was no signed Check-in inventory and there was no signed Check-out inventory to compare against. Furthermore, there were no Check-in photos to compare with the Check-out photographs

Case Study Sixty -two:

The Landlord was seeking to retain the sum of £678.40 for a) cleaning the Property (£287.88), b) window cleaning (£23.00), c) clearing the garden (£65.00), d) repairs and painting to walls (£210.00), e) replacing two chairs (£20.94), f) Replacing various damaged and/or missing items (£72.50).

The Adjudicator directed that the sum of £240.47 be returned to the Tenant for a) some items that the Landlord agreed there should not be charges b) the repairs and repainting because the Landlord has failed to differentiate between the existing repairs etc necessary when the Tenant moved in the condition at the end of the Tenancy.

Directing that the balance be returned to the Tenant, the Adjudicator noted that the Tenant was in breach of several Tenancy clauses regarding cleaning, windows and the garden.

Case Study Sixty -three:

In the tenancy agreement the Tenant agreed to pay the cost of the check out report, and the Landlords were able to recover this. The Landlords were also able to recover compensation for damage identified by the company that prepared the independent check out report. Where the cost of replacing an item was disproportionate the Landlords recovered compensation that reflected the minor nature of the damage.

Case Study Sixty -four:

The Tenant conceded the Landlord's claim for cleaning carpets, but disputed the claim for tidying the garden, saying that it was unfair to expect him to do this when no tools were provided. The Adjudicator did not agree. The tenancy agreement clearly gave the Tenant this obligation and he was not expected to do anything more than keep the garden tidy. He could have paid a gardener to do this, and if the Landlord had to pay for a gardener at the end of the tenancy the cost could be recovered from the Tenant.

Case Study Sixty -five:

It was clear from the check out report that the Tenants, and their dog, had caused damage to the property and its contents. The Tenants had agreed to pay for professional leaning at the end of their tenancy in return for permission to keep a dog. The estimate for cleaning and repairs exceeded the amount of the deposit, which the Adjudicator directed be paid to the Landlord.

Case Study Sixty -six:

The Landlords letting agents produced a check out report, which substantiated part of the Landlord's claim, but not the amounts sought. The Landlord produced no invoices or estimates. The Adjudicator directed that the Landlord should receive a payment in line with the evidence in the check out report, which was significantly less than the amount claimed.

Case Study Sixty -seven:

The Tenant admitted the Landlords' claim for a utility bill and the cost of replacing a damaged door. On the evidence produced by the Landlords the Adjudicator accepted the balance of the Landlords case for the cleaning of a sofa and the re-hanging of a second door.